

ORIGINAL



0000094168

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

Arizona Corporation Commission

DOCKETED

2009 FEB 27 P 3: 43

FEB 27 2009

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED BY [Signature]

COMMISSIONERS

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
- PAUL NEWMAN
- SANDRA D. KENNEDY
- BOB STUMP

DOCKET NO. RR-02635B-09-0075

IN THE MATTER OF THE APPLICATION OF THE CITY OF FLAGSTAFF TO UPGRADE EXISTING RAILROAD CROSSINGS OF THE BNSF RAILWAY COMPANY AT STEVES BOULEVARD AND FANNING DRIVE IN THE CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, DOT CROSSING NOS. 025099J AND 025129Y.

PROCEDURAL ORDER

BY THE COMMISSION:

On February 19, 2009, the City of Flagstaff ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval to upgrade two existing at-grade railroad crossings of the BNSF Railway Company ("BNSF") by installing additional warning devices in the form of wayside horns, as part of the City's plan to create a New Quiet Zone within the City's limits. The two crossings are at Steves Boulevard, DOT Crossing No. 025099J, and Fanning Drive, DOT Crossing No. 025129Y, both located within the City, in Coconino County, Arizona. The City explained that additional crossings (Beaver Street, San Francisco Street, and Enterprise Avenue¹) are to be included within its New Quiet Zone, but that no changes will be made to the warning devices, roadway configuration, or pavement markings at those crossings.

The Commission now issues this Procedural Order to govern the preparation and conduct of this proceeding.

IT IS THEREFORE ORDERED that the City's application shall be considered an application for BNSF to upgrade existing crossings pursuant to A.R.S. §§ 40-337 *et seq.*

IT IS FURTHER ORDERED that BNSF shall be considered as the Respondent in this proceeding.

¹ These crossings are further identified, respectively, by DOT Crossing Nos. 025133N, 025132G, and 025131A.

1 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **May 6,**
2 **2009, at 1:00 p.m.,** or as soon thereafter as is practicable, in the 2nd Floor Conference Room at the
3 Commission's offices at 1200 West Washington Street, Phoenix, Arizona.

4 IT IS FURTHER ORDERED that within five business days of receipt of this Procedural
5 Order, **the City shall provide BNSF, Coconino County, the Arizona Department of**
6 **Transportation, and any other municipality or interested person that may be affected by the**
7 **application with a copy of the application and this Procedural Order by certified mail.**

8 IT IS FURTHER ORDERED that the Railroad Safety Section of the Commission's Safety
9 Division ("Staff") shall prepare a written **Staff Report and associated exhibits** to be presented at
10 hearing and file copies of them with Docket Control on or before 4:00 p.m. on **March 27, 2009.**
11 **Staff shall ensure that a copy of the Staff Report and associated exhibits is provided to the City,**
12 **BNSF, and any other person identified in the service list for this docket.**

13 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
14 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on **April**
15 **10, 2009.**

16 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
17 105, except that all motions to intervene must be filed on or before **April 17, 2009.**

18 IT IS FURTHER ORDERED that the City shall provide public notice of the hearing in this
19 matter, in the following form and style, with the heading in no less than 12-point bold type and the
20 body in no less than 10-point regular type:

21 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE APPLICATION**
22 **OF THE CITY OF FLAGSTAFF TO UPGRADE EXISTING RAILROAD**
23 **CROSSINGS OF THE BNSF RAILWAY COMPANY AT STEVES BOULEVARD**
24 **AND FANNING DRIVE IN THE CITY OF FLAGSTAFF, COCONINO COUNTY,**
ARIZONA, DOT CROSSING NOS. 025099J AND 025129Y.
(DOCKET NO. RR-02635B-09-0075)

25 On February 19, 2009, the City of Flagstaff ("City") filed with the Arizona
26 Corporation Commission ("Commission") an application for approval to upgrade two
27 existing at-grade railroad crossings of the BNSF Railway Company ("BNSF") by
28 installing additional warning devices in the form of wayside horns. The two
crossings are at Steves Boulevard, DOT Crossing No. 025099J, and Fanning Drive,
DOT Crossing No. 025129Y, both located within the City, in Coconino County,
Arizona.

1 The Railroad Safety Section of the Commission's Safety Division ("Staff") is in the
2 process of analyzing the application and has not yet made any recommendations in
3 this matter. The Commission will determine whether to grant the application based
4 on the evidence of record in this matter. The Commission is not bound by the
5 proposals made by the City, BNSF, Staff, or any intervenors.

6 Copies of the application and the other documents filed in this matter are available at
7 the Commission's Docket Control Center at 1200 West Washington Street, Phoenix,
8 Arizona, for inspection during regular business hours, and on the Internet via the
9 Commission's website (www.azcc.gov) using the e-Docket function.

10 The Commission will hold a **hearing** in this matter beginning on **May 6, 2009, at**
11 **1:00 p.m.**, in the 2nd Floor Conference Room at the Commission's offices at 1200
12 West Washington Street, Phoenix, Arizona. Public comments will be taken on the
13 first day of the hearing. Written public comments may be submitted by mailing an
14 original and 13 copies of a letter referencing Docket No. RR-02635B-09-0075 to the
15 Commission's Docket Control Center, 1200 West Washington Street, Phoenix,
16 Arizona 85007.

17 Any person or entity entitled by law to intervene and having a direct and substantial
18 interest in the matter will be permitted to intervene. If you desire to intervene, you
19 must file an original and 13 copies of a written motion to intervene with the
20 Commission's Docket Control no later than **April 17, 2009**. You must send a copy of
21 the motion to intervene to the City or its counsel and to all parties of record. Your
22 motion to intervene must contain the following:

- 23 1. Your name, address, and telephone number and the name, address, and
24 telephone number of any party upon whom service of documents is to be
25 made, if not yourself;
- 26 2. A short statement of your interest in the proceeding (e.g., a customer of
27 BNSF, a neighboring property owner, a crossing user, etc.); and
- 28 3. A statement certifying that you have mailed a copy of the motion to intervene
to the City or its counsel and to all parties of record in the case.

18 The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except
19 that all motions to intervene must be filed on or before April 17, 2009. If
20 representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme
21 Court, intervention will be conditioned upon the intervenor's obtaining counsel to
22 represent the intervenor. For information about requesting intervention, visit the
23 Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>.
24 The granting of intervention, among other things, entitles a party to present sworn
25 evidence at hearing and to cross-examine other witnesses. However, failure to
26 intervene will not preclude any interested person or entity from appearing at the
27 hearing and providing public comment on the application or from filing written
28 comments in the docket for the case.

24 If you have any questions about the application, you may contact the City at [insert
25 telephone number].

26 The Commission does not discriminate on the basis of disability in admission to its
27 public meetings. Persons with a disability may request a reasonable accommodation
28 such as a sign language interpreter and request this document in an alternative format
by contacting the ADA Coordinator, Shaylin Bernal, at sabernal@azcc.gov, voice
phone number 602-542-3931. Requests should be made as early as possible to allow
time to arrange the accommodation.

1 IT IS FURTHER ORDERED that the City shall cause the above notice to be **published** at
2 least once in a newspaper of general circulation in the area where the crossings are located, with
3 **publication to be completed no later than March 20, 2009.**

4 IT IS FURTHER ORDERED that notice shall be deemed complete upon the publication of
5 same, notwithstanding the failure of an individual or entity to read or receive the notice.

6 IT IS FURTHER ORDERED that the **City shall file certification of notice with the**
7 **Commission's Docket Control as soon as practicable** after the publication of notice ordered herein
8 has been completed, and **no later than April 10, 2009.**

9 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
10 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
11 *pro hac vice.*

12 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113 - Unauthorized
13 Communications) applies to this proceeding and shall remain in effect until the Commission's
14 Decision in this matter is final and non-appealable.

15 IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter,
16 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
17 ruling at hearing.

18 DATED this 27th day of February, 2009.

19
20
21 
22 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

23
24 Copies of the foregoing mailed/delivered
this 27th day of February, 2009, to:

25 Randy Whitaker, Senior Project Manager
26 Traffic Engineering
27 CITY OF FLAGSTAFF
28 City Hall
211 West Aspen Avenue
Flagstaff, AZ 86001

1 Melvin V. Thomas, Manager Public Projects
2 BNSF RAILWAY COMPANY
3 740 East Carnegie Drive
4 San Bernardino, CA 92408-3571

5 Robert Travis, PE, State Railroad Liaison
6 Utilities & Railroad Engineering Section
7 ARIZONA DEPARTMENT OF TRANSPORTATION
8 205 South 17th Avenue, Mail Drop 618E
9 Phoenix, AZ 85007

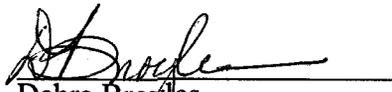
10 Traffic Records Section
11 ARIZONA DEPARTMENT OF TRANSPORTATION
12 206 South 17th Avenue, Mail Drop 064R
13 Phoenix, AZ 85007

14 Janice Alward, Chief Counsel
15 Legal Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007

19 Brian Lehman, Chief
20 Railroad Safety Section
21 ARIZONA CORPORATION COMMISSION
22 1200 West Washington Street
23 Phoenix, Arizona 85007

24 ARIZONA REPORTING SERVICE, INC.
25 2200 North Central Avenue, Suite 502
26 Phoenix, AZ 85004-1481

27 By:

28 
Debra Broyles
Secretary to Sarah N. Harpring